

)	
T-NETIX, Inc.: Joint Application for Streamlined Consent to Domestic and International Transfer of Control)	
)	
)	
)	
)	WC Docket No. 13-79
T-NETIX Telecommunications Services, Inc.: Application for Streamlined Consent to Domestic Transfer of Control)	
)	
Securus Technologies, Inc.: Joint Application for Streamlined Consent to Domestic and International Transfer of Control)	
)	
)	
)	

Phil Marchesiello
Wilkinson Barker Knauer, LLP
2300 N Street NW
Suite 700
Washington, DC 20037
202-383-3343

Dated: April 25, 2013

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

T-NETIX, Inc.: Joint Application for)	
Streamlined Consent to Domestic and)	
International Transfer of)	
Control)	
)	WC Docket No. 13-79
T-NETIX Telecommunications Services, Inc.:)	
Application for Streamlined Consent)	
to Domestic Transfer of Control)	
Securus Technologies, Inc.: Joint)	
Application for Streamlined Consent to)	
Domestic and International Transfer of)	
Control)	

**REPLY OF MILLICORP TO THE OPPOSITION OF SECURUS TECHNOLOGIES, INC.;
T-NETIX, INC.; T-NETIX TELECOMMUNICATIONS SERVICES, INC.; CONNECT
ACQUISITION CORP.; AND SECURUS INVESTMENT HOLDINGS, LLC TO THE
PETITION TO DENY BY PUBLIC KNOWLEDGE, UNITED CHURCH OF CHRIST,
OFFICE OF COMMUNICATIONS, INC., FREE PRESS, AND RAINBOW/PUSH
COALITION**

Millicorp, acting through counsel and in accordance with Section 63.52(c) of the rules of the Federal Communications Commission (“Commission”),¹ hereby files the instant reply (“Reply”) to the Opposition (“Opposition”)² filed by Securus Technologies, Inc. (“Securus”), *et al.* (collectively, “Applicants” and Securus, T-Netix, Inc., and T-Netix Telecommunications Services, Inc., the “ICS Providers”) to the Petition to Deny (“Petition”)³ filed by Public Knowledge, *et al.* (collectively,

¹ 47 C.F.R. § 63.52(c). Section 63.52(c) permits the filing of a reply to an opposition to a petition to deny a Section 214 application within five days after the opposition filing deadline. The instant Opposition was due on April 21—*i.e.*, ten days after April 11, which is the date on which the Petition was filed. Therefore, the deadline for filing this Reply is April 26—*i.e.*, five days after April 21.

² Opposition filed by Securus Technologies, Inc.; T-Netix, Inc.; T-Netix Telecommunications Services, Inc.; Connect Acquisition Corp.; and Securus Investment Holdings, LLC, Docket No. 13-79 (filed April 15, 2013) (“Opposition”).

³ Petition to Deny filed by Public Knowledge; United Church of Christ, Office of Communications, Inc.; Free Press; and Rainbow/PUSH Coalition, Docket No. 13-79 (filed April 11, 2013) (“Petition”).

“Petitioners”) in the above-referenced proceeding.⁴ The Applicants have filed applications requesting Commission consent to transfer control of certain Commission authorizations related to the provision by the ICS Providers of inmate calling services (“ICS”) to state and local prison facilities, including an application (“Application”) to transfer control of the ICS Providers’ domestic Section 214 blanket authorizations.

Millicorp files this Reply to support and augment the arguments asserted in the Petition that the Applicants “fail[ed] to meet their affirmative burden to demonstrate the contemplated transfer of control is required for public convenience and necessity.”⁵ In addition, Millicorp⁶ respectfully requests the Commission (i) to withdraw its initial determination that the Application is subject to streamlined processing pursuant to Section 63.03 of the Commission’s rules;⁷ (ii) as part of the Commission’s evaluation of whether the proposed transfer of control serves the public interest, to further investigate the impermissible and illegal actions of the ICS Providers described in

⁴ See *Domestic Section 214 Application Filed for the Transfer of Control of the Operating Subsidiaries of Securus Technologies Holdings, Inc. to Securus Investment Holdings, LLC*, Public Notice, DA 13-578, WC Docket No. 13-79 (rel. March 28, 2013) (“Public Notice”).

⁵ Petition at 1.

⁶ Millicorp has standing to participate in this proceeding. In order to establish “party in interest” status, a party must: (i) “allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury”; and (ii) “demonstrate a causal link between the claimed injury and the challenged action: it must establish that the injury can be traced to the challenged action and that the injury would be prevented or redressed by the relief requested.” See *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corp., Horizon Wi-Com, LLC, Next Wave Wireless, Inc., and San Diego Gas & Electric Company For Consent to Assign and Transfer Licenses*, Memorandum Opinion and Order, 27 FCC Red 16459, ¶ 16 (2012). As exhaustively documented in WC Docket No. 09-144, the blocking of inmate calls to Millicorp’s customers directly and egregiously provides competitive and financial harms to Millicorp on a daily basis. These direct injuries include a substantial reduction in revenues, loss of customers, and damage to Millicorp’s reputation. Further, there is a causal link between these direct injuries and the transfer of control proposed in the Application. If approved, the transaction will aggravate and increase these harms to Millicorp by “enhancing the [ICS Providers’] financial capabilities;” enabling the ICS Providers to “expand [their] services at new facilities;” and “ensuring the long-term viability” of the ICS Providers. Opposition at 4.

⁷ 47 C.F.R. § 63.03.

Millicorp's filings in WC Docket No. 09-144,⁸ and (iii) to the extent that the Commission nevertheless determines to approve the Application, to condition any such approval on a binding and enforceable agreement by the Applicants to cease blocking inmate calls to the customers of Millicorp and similarly situated voice over Internet protocol ("VoIP") providers.

I. THE COMMISSION SHOULD REMOVE THE APPLICATION FROM STREAMLINED PROCESSING

As an initial matter, Millicorp requests the Commission to remove the Application from streamlined processing. Although the Commission has made a tentative determination "upon initial review"⁹ that the Application is subject to streamlining, Section 63.03(c)(v) of the Commission's rules permits the Commission to remove the Application from streamlining if the Chief of the Wireline Competition Bureau ("Bureau") "determines that the application requires further analysis to determine whether a proposed transfer of control would serve the public interest."¹⁰ In addition, Section 63.03(c)(iv) of the Commission's rules permits the Commission to remove the Application from streamlining if "[t]imely filed comments on the application raise public interest concerns that require further Commission review."¹¹

Both criteria have been satisfied. Bureau investigation of the violations by the ICS Providers of Sections 201 and 202 of the Communications Act of 1934, as amended ("Communications Act"),¹² as well as the ICS Providers' consistent violation of the Commission's longstanding policy

⁸ Securus is one of the ICS Providers, and it has been Millicorp's experience that the call blocking and other improper and illegal activities of Securus also are perpetrated by its affiliates, the other ICS Providers.

⁹ *Public Notice* at 2.

¹⁰ 47 C.F.R. § 63.03(c)(1)(v).

¹¹ 47 C.F.R. § 63.03(c)(1)(iv).

¹² 47 U.S.C. §§ 201, 202.

prohibiting common carriers from call blocking, warrant further analysis by the Bureau. Moreover, this Reply and the Petition are timely filed comments that raise public interest concerns that require further Bureau review. The violations by the ICS Providers of the Communications Act and the Commission's policies discussed in the Petition and in this Reply call into question the ICS Providers' basic qualifications to hold common carrier authorizations.¹³ In addition, the ICS Providers should not be permitted to realize financial gains from the proposed transfer of control given that the acquisition of the ICS Providers is motivated at least in part by the ICS Providers' improper and outsized revenues attributable to their violations of the Communications Act and the Commission's policies.

II. THE ICS PROVIDERS VIOLATE SECTIONS 201 AND 202 OF THE COMMUNICATIONS ACT ON A DAILY BASIS

The Petition argues that the Bureau should deny the Application in part because of violations by the ICS Providers of Section 201 of the Communications Act.¹⁴ Millicorp files this Reply to support and augment the Petitioners' position. As set forth below, in addition to the unjust and unreasonable prison telephone rates charged by the ICS Providers and described in the Petition,¹⁵ the ICS Providers also violate Sections 201 and 202 of the Communications Act on a daily basis by blocking inmate calls to Millicorp's customers. This rampant and illegal inmate call blocking is comprehensively detailed in the Commission's pending proceeding in WC Docket No. 09-144 in which the Commission is considering the Petition for Declaratory Ruling filed by Securus in July of

¹³ Accordingly, the Commission promptly should issue a public notice removing the Application from streamlining, *see* 47 C.F.R. § 63.03(c)(2), to prevent the Applicants from consummating the proposed transfer of control on April 28—*i.e.*, the 31st day after the date of release the *Public Notice*.

¹⁴ *See* Petition at 7-8.

¹⁵ *Id.*

2009.¹⁶ In the Securus Petition, Securus requests the Commission to approve the blocking by ICS providers of inmate calls to customers of Millicorp and other similarly situated VoIP providers, which Securus creatively but inaccurately terms “call diverters.” Despite the fact that the Commission has not yet acted on the Securus Petition, the ICS Providers continue to illegally block inmate calls to Millicorp’s customers every day.

A. Call Blocking Is a Violation of Section 201 of the Communications Act and the Commission’s Longstanding Policy Against Call Blocking

The ample record in WC Docket No. 09-144 demonstrates that Securus and other ICS providers have an extensive history of impermissibly and illegally blocking calls to customers of Millicorp.¹⁷ Securus’ call blocking activities constitute violations of the Communications Act and the Commission’s longstanding policy prohibiting call blocking. The Commission clearly has determined that, absent an express exemption, call blocking by common carriers is a violation of the Communications Act.¹⁸ This policy repeatedly has been affirmed by the Commission.¹⁹ For example, the Commission stated in a recent decision:

¹⁶ Petition for Declaratory Ruling filed by Securus Technologies, Inc., WC Docket No. 09-144 (filed July 24, 2009) (“Securus Petition”). The relationship of Millicorp to the ICS Providers and the call blocking by ICS Providers is extensively discussed in the record in WC Docket No. 09-144, and Millicorp does not repeat this background herein.

¹⁷ See generally Millicorp’s and Millicorp’s customers’ many filings in WC Docket No. 09-144 detailing a wide range of abusive, coercive, and otherwise harmful behavior by Securus and other ICS providers. Millicorp hereby requests the Bureau to include these filings as part of the record of the instant proceeding.

¹⁸ ICS providers are telecommunications common carriers generally subject to Title II of the Communications Act. See Securus Petition at 2 (“Inmate telephone providers are subject to all federal and state regulations applicable to non-incumbent telecommunications common carriers.”).

¹⁹ See *Ex parte* letter from Phil Marchesiello, counsel to Millicorp, to Marlene H. Dortch, Secretary, FCC, Docket No. 09-144, at 7-8 (filed June 17, 2011) (citing *Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629 ¶¶ 1, 5-6 (WCB 2007) for the proposition “that Commission precedent does not permit unreasonable call blocking by carriers” and “call blocking is an unjust and unreasonable practice under section 201(b) of the Act”); see also *Ex parte* letter from Phil Marchesiello, counsel to Millicorp, to

We decline to adopt any remedy that would condone, let alone expressly permit, call blocking. The Commission has a longstanding prohibition on call blocking. In the *2007 Call Blocking Order*, the Wireline Competition Bureau emphasized that “the ubiquity and reliability of the nation's telecommunications network is of paramount importance to the explicit goals of the Communications Act of 1934, as amended” and that “Commission precedent provides that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way.” We find no reason to depart from this conclusion. We continue to believe that call blocking has the potential to degrade the reliability of the nation's telecommunications network.²⁰

Moreover, the Wireline Competition Bureau also recently issued a Declaratory Ruling in which it emphasized that “carriers are directly bound by the general prohibition on call blocking with respect to VoIP-PSTN traffic, as with other traffic.”²¹ The Bureau also emphasized the seriousness of such violations:

[P]ractices such as those described herein that lead to call termination ... may constitute unjust and unreasonable practices in violation of section 201 of Communications Act of 1934, ... and/or may violate a carrier's section 202 duty to refrain from unjust or unreasonable discrimination in practices, facilities, or services.²²

The Commission has not acted on the Securus Petition and therefore has not provided the ICS Providers with permission to block calls to Millicorp's subscribers. Indeed, the fact that Securus found it necessary to file the Securus Petition essentially admits that no express permission has been granted by the Commission. Thus, the self-help practiced by the ICS Providers by blocking inmate

Marlene H. Dortch, Secretary, FCC, Docket No. 09-144, at 3-5 (filed March 9, 2012); *Ex parte* letter from Phil Marchesiello, counsel to Millicorp, to Marlene H. Dortch, Secretary, FCC, Docket No. 09-144, at 2-5 (filed March 6, 2013) (listing various recent Commission decisions supporting the proposition).

²⁰ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 734 (2011) (internal citations omitted).

²¹ *Developing an Unified Intercarrier Compensation Regime*, Declaratory Ruling, 27 FCC Rcd 1351, ¶ 10 (WCB 2012). Although the Bureau decision specifically involved carrier interconnection disputes, the Bureau nevertheless emphasized the generally applicable nature of the Commission's call block prohibition.

²² *Id.* at ¶ 4.

calls to the customers of Millicorp is a direct violation of their obligations under Section 201(b) of the Communications Act to refrain from unjust and unreasonable practices.²³

B. The ICS Providers Violate Section 202 of the Communications Act by Independently Determining to Which Telephone Companies' Customers They Will Complete Inmate Calls

By permitting inmates to call the customers of some telephone companies while blocking inmate calls to the customers of other telephone companies, the ICS Providers also are violating Section 202 of the Communication Act. Section 202(b) states that “[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, ... or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage....”²⁴ The Commission has cited this section as one of the key provisions prohibiting call blocking and similar activity.²⁵

One of the ICS Providers, Securus, expressly states on its website that it unilaterally determines which VoIP providers are “approved,” such that Securus will complete inmate calls to the customers of these providers.²⁶ In addition, Millicorp understands that Securus’ customer service representatives (“CSRs”) have repeatedly responded to complaints from Millicorp customers

²³ 47 U.S.C. § 201(b) (“All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful . . .”). Further, such call blocking also may be a violation of Section 201(a) of the Communications Act, which states that “it shall be the duty of every common carrier ... to furnish such communication service upon reasonable request thereof.” 47 U.S.C. § 201(a).

²⁴ 47 U.S.C. § 202.

²⁵ See *Rural Call Completion*, Notice of Proposed Rulemaking, 28 FCC Rcd 1569, ¶ 10 (2013) (reiterating the holding of *Developing a Unified Inter-carrier Compensation Regime, Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling, 27 FCC Rcd 1351, ¶ 12 n.37 (2012)).

²⁶ See *VoIP Telephone Numbers are Compatible with Securus*, (Nov. 20, 2012), available at http://securus.custhelp.com/app/answers/detail/a_id/256/related/1.

about call blocking in a similar manner. In chat sessions between disgruntled Millicorp customers and Securus' CSRs, the CSRs have stated the following:

Please be advised the telephone numbers you provide must be the actual telephone numbers assigned by an *authorized* telephone company. Providing us with a number that attempts to mask the real telephone number or address of the receiving party could be considered fraudulent activity and may result in penalties to you and your inmate, which could include permanent loss of account usage, loss of inmate calling privileges, and criminal prosecution.²⁷

ICS providers such as Securus do not have unfettered authority to unilaterally determine whether to complete calls to the customers of certain providers (*i.e.*, those on the “approved” or “authorized” lists) and block calls to the customers of other providers. This selective call completion by Securus patently qualifies as discrimination against certain providers and their customers in violation of Section 202 of the Act.

III. CONCLUSION

The persistent violations by the ICS Providers of Sections 201 and 202 of the Communications Act set forth in the Petition and in this Reply warrant further analysis by the Bureau as part of its consideration of whether grant of the Application is consistent with the public interest. Further, the pattern of illegal and improper actions by Securus detailed in WC Docket No. 09-144 similarly requires further analysis by the Bureau.²⁸ Accordingly, at minimum, the Bureau should remove the Applications from streamlined processing to enable the Bureau to further investigate these matters. Moreover, if the Bureau ultimately determines to grant the Application, it

²⁷ See *Ex parte* letter from Phil Marchesiello, counsel to Millicorp, to Marlene H. Dortch, Secretary, FCC, Docket No. 13-79, at 4-6 (filed April 25, 2013).

²⁸ Although WC Docket No. 09-144 is a separate proceeding from the instant proceeding, it nevertheless has a direct bearing on whether the ICS Providers have the basic qualifications to hold common carrier authorizations in light of their rampant violations of the Communications Act detailed in WC Docket No. 09-144. Thus, WC Docket No. 09-144 is fundamentally germane to Bureau action in the instant docket, WC Docket No. 13-79.

should condition any such approval on a binding and enforceable agreement by the Applicants to cease blocking inmate calls to the customers of Millicorp and similarly situated VoIP providers.

Respectfully submitted,

MILLICORP

By: /s/ Phil Marchesiello
Phil Marchesiello
Wilkinson Barker Knauer, LLP
2300 N Street NW
Suite 700
Washington, DC 20037
202-383-3343

Counsel for Millicorp

Dated: April 25, 2013

DECLARATION

I, Timothy Meade, President of Millicorp, hereby declare, under penalty of perjury, that I have reviewed the foregoing *ex parte* notice and that the information contained therein is true and accurate to the best of my knowledge, information and belief.

Signed and dated this 25th day of April 2013.

/s/ Timothy Meade

Timothy Meade
President, Millicorp

CERTIFICATE OF SERVICE

I, Phil Marchesiello, certify on this 25th day of April, 2013, that a copy of the foregoing “Reply of Millicorp to the Opposition of Securus Technologies, Inc.; T-Netix, Inc.; T-Netix Telecommunications Services, Inc.; Connect Acquisition Corp.; and Securus Investment Holdings, LLC to the Petition to Deny by Public Knowledge, United Church of Christ, Office of Communications, Inc., Free Press, and Rainbow/PUSH Coalition” has been served via Electronic Mail to the following:

Harold Feld
Senior Vice President
Public Knowledge
1818 N Street, NW
Washington, D.C. 20036
T: (202) 861-0020
F: (202) 861-0040
hfeld@publicknowledge.org

Steven Smith
Executive Director
Public Policy Institute
Government Relations &
Telecommunications Project
Rainbow /PUSH Coalition
727 15th Street, NW, #1200
Washington, DC 20005
T: (202) 393-7874
ssmith@rainbowpush.org

Cheryl A. Leanza
Policy Advisors
United Church of Christ
Office of Communications, Inc.
100 Maryland Avenue, NE, Suite 330
Washington, DC 20002
T: (202) 904-2168
cleanza@alhmail.com

Matthew F. Wood
Policy Director
Free Press
1025 Connecticut Avenue, NW, Suite 110
Washington, DC 20036
T: (202) 265-1490
F: (202) 265-1489
mwood@freepress.net

Tracey Wilson
Competitive Policy Division
Wireline Competition Bureau
Tracey.wilson@fcc.gov

David Krech*
Policy Division
International Bureau
David.krech@fcc.gov

Dennis Johnson
Competitive Policy Division
Wireline Competition Bureau
Dennis.johnson@fcc.gov

Jim Bird*
Office of General Counsel
jim.bird@fcc.gov

Paul C. Besozzi
Counsel for Transferor
Patton Boggs LLP
2550 M Street, NW
Washington, D.C. 20037
T: (202) 457-5292
F: (202) 457-6315
pbsozzi@pattonboggs.com

Bennett Ross
Counsel for Transferee
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006
T: (202) 719-7524
F: (202) 719-7049
bross@wileyrein.com

/s/ Phil Marchesiello
Phil Marchesiello